

January 24, 2006



TRANSCRIPT
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PRESENT

MONTGOMERY COUNTY COUNCIL

George Leventhal, President
Phil Andrews
Nancy Floreen
Thomas Perez

Marilyn Praisner, Vice President
Howard Denis
Michael Knapp
Steven A. Silverman

Michael Subin



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1 Council President Leventhal,
2 Good Morning, is Reverend Paulson here? Good Morning Reverend, how are you?
3 Please come forward, our invocation this morning is by the Reverend Connie Paulson of
4 Millian Memorial United Methodist Church in Rockville. Press the button please.

5
6 Reverend Connie Paulson,
7 Let us be together in prayer. Creator God, we give you thanks for the beauty of this day
8 that you have given us the gift of life and the gift of the freedom to come and gather
9 here to be about the business of Montgomery County, but more importantly about your
10 business. We thank you for all the gifts that you've given to us, and pray that we will be
11 good stewards of those gifts. We thank you for all of the human resources that you have
12 granted unto us. Those in various communities who uphold and nurture and love others
13 into the fullness of their being, and we thank you for the physical resources you have
14 given to us, that we can be good stewards of all of nature, the buildings and many
15 things you have given to us to help us be loving human beings, and we thank you for
16 the financial resources that we have, and again that we be good stewards of those and
17 giving so that we can help the poor and oppressed and to help everyone to live equally
18 with the blessings that you have given to us. We thank you, Oh God, for all of these
19 things. Bless all of the business that transacts here today so that all will glorify you. We
20 thank you and we ask that you continue to love us and that we will in turn love you and
21 love one another. These things we pray, amen.

22
23 Council President Leventhal,
24 Thank you, very much. We have a presentation by Councilmember Praisner.

25
26 Councilmember Praisner,
27 Thank you. Would Mr. Perlet join me up here please? Well, every year we have an
28 opportunity, and I loved it when I have the chance to do it, to recognize one of the
29 outstanding, educators within our county. This time, it's Jerrold Perlet, who is the
30 Principle at Sherwood Elementary School. A lovely little school tucked in a wonderful
31 section of the county, and as I have read about this outstanding educator, I've learned
32 that his application for the recognition was done by the faculty of the school, which is an
33 indication of the respect that they have for him, as they secretly worked with his of wife
34 Marie to provide the information in order to get this recognition. He is a hands-on
35 educator who is involved in everything at the Sherwood Elementary School from helping
36 teachers install equipment in their classrooms, to visiting the classrooms daily in order
37 to support the quality instruction at that school. Let me read a proclamation. Whereas
38 Jerrold Perlet Principal of Sherwood Elementary School has been selected as recipient
39 of the prestigious 2005 Washington Post Distinguished Educational Leadership Award
40 for Montgomery County. And whereas the educational leadership award is presented
41 annually to one Principal in each Washington Metropolitan area school district and to
42 one principle of an area private school for promoting an excellent educational program,
43 and creating an exceptional educational environment. And whereas Mr. Perlet was
44 recognized for his dedication to Sherwood students success, his leadership skills,



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1 collaborative approach, connection with the students and commitment to student
2 achievement. And whereas Mr. Perlet was instrumental in the system wide development
3 of the Baldrige Guided School Improvement Process, serving as a member of the
4 Baldrige Implementation Committee. And whereas under his leadership, Sherwood
5 Elementary School was chosen as the location of one of two Baldrige Quality
6 Academies, where thousands of teachers and many principals have visited Sherwood to
7 receive training and support. And whereas Gerald Perlet exemplifies how educational
8 professionals who are committed to academic excellence can open the doors of
9 success for the young people of Montgomery County. Now therefore be it resolved that
10 the County Council of Montgomery County hereby proclaims congratulations to Gerald
11 Perlet and Sherwood Elementary School for receiving the 2005 Washington Post
12 Distinguished Educational Leadership Award and it's presented on this 24th day of
13 January, in the year 2006, and signed by our Council President George Leventhal.
14 Congratulations.

15
16 [APPLAUSE]
17

18 Jerrold Perlet,

19 Well thank you very much, its been a very exciting time and I've accepted this award in
20 honor of my own staff, who's worked very hard, and the students at our school and the
21 parents. We work together as a group, and the Baldrige process had been a terrific
22 way for us all to come together, and its been an honor to work in Montgomery County all
23 of these years, it's an excellent system, and I thank the Council for providing all the
24 support that you do to the school system. Because we couldn't do the job if you didn't
25 stand behind us and provide us with support. So, thank you very much.

26
27 Councilmember Praisner,

28 Well thank you, there's got to be a team leader, and you are certainly it.
29

30 Jerrold Perlet,

31 Thanks very much.
32

33 Councilmember Praisner,

34 Take that, and folks may want to take some pictures.
35

36 Council President Leventhal,

37 All right, thank you very much, we have a number of people here for a proclamation
38 regarding the Lunar New Year, and we will do that in just a few minutes. Our
39 photographer is stuck in traffic and we want to be able to take a picture of all the
40 distinguished leaders here for the Lunar New Year. So for right now, we are going to
41 ask Ms. Lauer for any agenda and calendar changes.
42

43 Linda Lauer,



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One addition that we had to the agenda today is that this joint proclamation on the Lunar New Year day, so we'll add that to the agenda, two items are deferred. Agenda item number five which is a resolution to establish a transportation management district in greater Shady Grove, that will come back to you in a couple of weeks. Deferred discussion with the Planning Board response to the report and recommendations of the Special Advisor on the development approval and implementation process. And then just a note, the Council's Ad Hoc Committee on Information and Outreach will meet later this morning at the conclusion of this session. We have two petitions that the Council has received this week, Petition of members of the Olney Boys and Girls Community Sports Association; they're supporting construction of a gymnasium on the 32-acre Bowie Mills site in Olney along with affordable housing. Also a petition from residents of Montgomery County supporting the renovation of the Gaithersburg Library, thank you.

Council President Leventhal,
Okay, thank you Ms. Lauer, approval of minutes?

Council Clerk,
We have the minutes of December 13th for approval.

Council President Leventhal,
Motion is made and seconded, is there objection to approval of the minutes? Hearing no objection, the minutes are approved. Consent calendar, motion is made and seconded to approve the consent calendar, Mr. Denis.

Councilmember Denis,
Thank you, Mr. President. I'd like to make some comments of about one item on the consent calendar, item L, which is a special appropriation to MCPS in the amount of \$3.3 million for Seven Locks Elementary School replacement. Mr. President and members of the Council, this appropriation is deemed necessary if the new Kendale Elementary School is to be built to replace the current Seven Locks Elementary School. As has been true for most of the recent bids, the cost of the replacement school are significantly higher than anticipated. This project is important to many in our community. The additional capacity is needed to relieve other overcrowded elementary schools in the Churchill cluster. The Seven Locks facility is also in significant need of upgrading and renovation. However, there are still serious questions about the replacement project as proposed by the Board, and I would like to make sure my concerns continue to be understood from the very beginning. The timing of this special appropriation request is problematic. I had understood from correspondence we've received from the Inspector General that he had asked the Board to not proceed with awarding the contract until he is able to complete his analysis. I do not believe his analysis has been completed. In addition, this special appropriation request is so close to our consideration of the entire CIP that I question what the real benefit is of proceeding at this time rather than considering this project in the context of the total CIP. Given all of the potential deferrals and delays in other MCPS projects. Considering the need for additional funds for this

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1 project, and the context of the total CIP seems to me it would be more prudent and
2 wise, in my view, to have gone in a different direction. I also have some concerns about
3 the rise of costs of the new school project and the narrowing of the gap between the
4 costs of the Kendale replacement school and the modernization addition project at
5 Seven Locks. The Council had approved the new Kendale project, premised solely on
6 the data we were presented at the time that indicated that the Kendale project was
7 significantly less expensive than the Seven Locks modernization edition project. Now
8 that the gap has narrowed so significantly, it raises other questions. For example, what
9 is the cost of building a one stage addition modernization, rather than the more
10 expensive two stage project previously envisioned by the Board and costed out by the
11 school system? Or, what is the cost of a whole new school on Seven Locks? The
12 answer to the questions may in fact change the analysis and affect the decision about
13 what option to fund in the Seven Locks dilemma. I know we will be discussing this issue
14 at the public hearing on February 14th, and when the education committee considers
15 this request. But, I simply wanted to underscore my concerns and questions at this time.
16 Thank you Mr. President.

17
18 Council President Leventhal,
19 Okay, thank you Mr. Denis, and just for the benefit of those appreciating Mr. Denis', the
20 force of Mr. Denis' argument, this is just an introduction today. We are not voting today.
21 The Education Committee will take this up and the full Council we'll have the opportunity
22 to discuss this further and we will look forward to Mr. Denis' anticipated further
23 comments at that time, but we're not acting today on that matter. We're simply
24 introducing it, and Mr. Silverman?

25
26 Councilmember Silverman,
27 Thank you Mr. President, on this issue as well, as people know, if anybody's paying
28 attention, I've been a supporter of this because I believe, that when the school system
29 makes a decision about where school is going to be built that we should not be second
30 guessing the School Board. Having said that, the driving force, at least for me, was the
31 cost benefit analysis between a new school at Kendale, and the modernization, and
32 addition that would be necessary at Seven Locks, all of which is driven by the need to
33 relieve overcrowding at Potomac Elementary School. Having said all of that, I would
34 hope and assume that before the Council takes up this appropriation at whatever point
35 in time we take it up, that we would have from the school system, comparable
36 information about cost increases in connection with Seven Locks, and a Seven Locks
37 modernization and addition so that we are truly comparing apples to apples, and not just
38 a stand alone situation. This is very unique, and what for me was the driving force was
39 the cost analysis and I want to at least make sure we have that information, I'm sort of
40 directing this mostly to our staff to make sure they put together numbers, and more
41 importantly, that those numbers are shared well in advance of any decisions by the
42 Council with the committee which has been so actively engaged in looking at this issue.
43 Thank you.

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1 Council President Leventhal,
2 Okay. There are no further comments on the consent calendar? Those in favor of
3 adopting the consent calendar will signify by raising their hands. It is unanimous among
4 those present. Okay, it looks like our photographer is stuck. So, what I'm going to do,
5 we're going to go ahead and ask our friends from the Asian, various Asian communities,
6 the Korean, Chinese, and Vietnamese communities who are represented here to come
7 on up. And, um we have the Chief Administrative Officer from Montgomery County, Mr.
8 Bruce Romer is here. There is a lot of debate as to who is the second most powerful
9 person in county government; some people say it's the Planning Board Chair. Some
10 people say it's the Chief Administrative Officer, I happen to believe it's the President of
11 the County Council, but you know...

12
13 [LAUGHTER]
14
15

16 ...but in any event I don't want to keep Mr. Romer waiting, we know he has important
17 work to do. Hi Juan, hi George, how are you? Good to see you.

18
19 Councilmember Silverman,
20 George, I think they brought their own cameras.
21

22 Council President Leventhal,
23 It looks like there are some photographers here, and we will actually ask you to share
24 with us some of these shots. Something has delayed our County Council Photographer,
25 I'm not sure what. So, we'll ask you to share some of these pictures with us, as we now
26 go ahead and present these proclamations marking the Lunar New Year, and I'll just go
27 ahead and read this Bruce, or did, yeah I'll go ahead and read it. Whereas the Asian-
28 American community now represents over 13% of the population of Montgomery
29 County, and whereas Montgomery County is the most diverse jurisdiction in Maryland,
30 and continues to foster an environment that welcomes all individuals, and whereas
31 Asian Americans continue to strengthen Montgomery County, and American society as
32 a whole through lasting contributions in every professional endeavor, and whereas
33 Lunar New Year is celebrated by a great number of Montgomery County residents, and
34 holds special significance in the Chinese-American, Korean-American and Vietnamese-
35 American communities, and whereas January 28th, 2006 is recognized as the start of
36 the year 4704 in the lunar calendar, the year of the dog, now therefore do we Douglas
37 Duncan, County Executive and George Leventhal, County Council President, hereby
38 proclaim Saturday January 28th, 2006 as Lunar New Year Day in Montgomery County,
39 and we encourage all residents to learn more about the rich diversity of our county, and
40 to join in the days festivities. Bruce did you want to make any quick remark on behalf of
41 the County Executive
42

43 Bruce Romer,



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1 I'm just very pleased to be here on behalf of our County Executive, Mr. Duncan, and to
2 join with the Council President, Mr. Leventhal, in this very appropriate recognition of a
3 day that is very, very important to a growing number of residents in Montgomery
4 County. We look forward to joining with everyone and celebrating the Lunar New Year.

5
6 [APPLAUSE]

7
8 Council President Leventhal,
9 We have so many leaders in these active communities. We have, I believe, one
10 proclamation each for the leadership of the Korean-American, Chinese-American and
11 Vietnamese-American communities, and it will be very interesting to see who ends up
12 being identified the leaders because they are all leaders.

13
14 Unidentified Speaker,
15 They are all leaders in the Chinese community, but Dr. Henry [Lau] and Martin [Ma]

16
17 Council President Leventhal,
18 Excellent, great, so Dr. [Lau] and Dr. [Ma], let's have a picture with you, and with myself,
19 and with Bruce Romer. Okay. Great. Okay, there we go Dr. [Lau], Thank you very
20 much, and then thank you very much. And in the Korean-American community?
21 Excellent. Very good and then, I believe, is Juan? Here we are. Juan and George, very
22 good. Fine, very good, now please stay a moment, because I am about to introduce a
23 bill that will be also relevant to the Lunar New Year. And, Bruce you're free to stay or to
24 go and do your other work. Thank you very much Now, we've been, many of my
25 colleagues have met with the leadership of these communities with a request that we
26 act in an inappropriate way, not only today, but permanently to ensure that residents of
27 Montgomery County are aware of the importance of the Lunar New Year to our
28 community. And, of course there are many other days throughout the year that are of
29 special significance to a variety of communities in the county. And so today along with
30 Mr. Silverman, I am introducing Bill 1-06, Personnel Special Days of Commemoration.
31 And what this bill will do is, there is no cost associated with this bill, it has the support of
32 the executive branch, but what it will basically do is to help educate and inform county
33 employees and the whole community, when a day such as the Lunar New Year takes
34 place. These are days that many county employees may want to take off. And, we have
35 procedures, they are the same procedures, but under this bill, all managers in county
36 government will be made aware of the procedures whereby an employee make request
37 leave of for a special day. In addition, there are clients, people who receive services
38 from the county who may have a day on which they would rather not be disturbed or
39 which may not be the best day to deliver services. And so, just very simply what this
40 legislation will do is that it requires the Chief Administrative Officer or his designee too,
41 one week before each day of commemoration, All county employees will be notified in
42 writing or electronically of the date of the day of commemoration with a brief explanation
43 for the religious, ethnic or cultural meaning of the day or days of commemoration, and
44 any relevant information regarding the manner in which daily activities of county

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1 residents may affect programs or services provided by the county, and when
2 appropriate, a greeting or salutation that may be shared by county employees with
3 county residents for whom the day or days have special meaning, and then for, where
4 appropriate an explanation of the county's rules governing leave and alternate work
5 schedules for religious observance. I want to thank, of course the many organizations
6 that represent the Korean, Vietnamese, and Chinese communities, as well as the
7 Jewish Community Relations Council, and community ministries of Montgomery County,
8 and the Muslim Community Center, all of which participated in a committee with me and
9 my staff in developing this legislation, which as I say, has the support of the Executive
10 Branch. And I'll just briefly read the days that will be identified for this purpose, and we
11 also ask the Chief Administrative Officer to designate any other day that he determines
12 has special religious, ethnic, or cultural meaning, that will affect the daily activities of
13 more that three percent of the total population of Montgomery County. The days
14 identified in the bill are Eid-Al-Adha, the Asian Lunar New Year, Ash Wednesday,
15 Purim, Passover, Holy Thursday, Good Friday, Easter, Orthodox Holy Thursday,
16 Orthodox Good Friday, Orthodox Easter, Ascension Thursday, Shavuot, Feast of the
17 Assumption, Rosh Hashanah, Yom Kippur, Sukkot, Shaminiate Sherat [ph], Simchat
18 Torah, Eid-Al-Fitr, Di Wali, the Feast of All Saints, the feast of the Immaculate
19 Conception and Christmas. Mr. Subin.

20
21 Councilmember Subin,
22 I'd like an analysis from the County Attorney about the first amendment implications of
23 this bill.

24
25 Council President Leventhal,
26 Okay, we had consultation with our staff, but I'm sure the County Attorney will be happy
27 to provide that. Any other comments on this? Okay. The bill is introduced. We now
28 move to, and thank you all very much for being here, of course you're free to stay as
29 long as you like. We now move to District Council session. We need a resolution to
30 extend the time for issuance of the Hearing Examiner's reports and recommendation on
31 the local map amendment G-836 is there a second? Motion is made and seconded,
32 those in favor of extending the time for the Hearing Examiner's report will signify by
33 raising their hands, you've got to raise you hands there Council people. Okay, it's
34 unanimous among those present. We have action on Zoning Text Amendment 5-14,
35 sign ordinance, limited duration signs. We have a report from the PHED Committee,
36 Chairman Silverman.

37
38 Councilmember Silverman,
39 The committee voted two to one, no, that's the report. We might as well just get into the
40 substantive discussion, rather than try to go through what we talked about. What I would
41 suggest is the following I would like Ralph and Marc Hansen to explain the options in
42 front of the Council. This is a very complex piece of legislation, not and its intent, but in
43 the definitions and distinctions between limited duration signs, temporary signs etc. etc.,
44 so I'd really like to defer to Ralph and to Marc about what we can and cannot do. Marc



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1 on the legal issues, but Ralph, why don't you start by explaining to the Council what the
2 distinctions are in terms of the signs that are in play here.

3
4 Ralph Wilson,

5 Under the current sign ordinance, the temporary sign is a sign that can be on private
6 property or public right-of-way for 30 days. If the sign exceeds the 30 day period, the
7 sign has, you have to obtain a sign permit. Which can be renewed, I think, annually. So
8 it, in effect, the zoning ordinance says it is not intended to be for an unlimited period of
9 time. But in effect it can be extended for an unlimited period of time. So elimination of
10 the requirement for the permit, in effect, would convert a temporary sign into a limited
11 duration sign. Councilmember Floreen has proposed one option which is noted in the
12 cover memo. She proposes that the definition of temporary sign that is displayed on
13 private property for less than 30, she would add the term consecutive days as an
14 alternative to the text amendment.

15
16 Councilmember Silverman,
17 And where, I'm sorry, where is that?

18
19 Ralph Wilson,
20 That's the second paragraph.

21
22 Councilmember Silverman,
23 Oh right, sorry. Marc, could you talk about the legal issues involved in the legislation?

24
25 Marc Hansen,
26 I can try.

27
28 Ralph Wilson,
29 Cliff is not here.

30
31 Marc Hansen,
32 You see the sweat start to bead up here...

33
34 [LAUGHTER]

35
36 ...I do, I am familiar somewhat with the overview problems this text amendment
37 originated with concern that was raised over limited duration signs and the requirement
38 that individuals obtain a permit if the sign would be longer than 30 days but not a
39 permanent sign. The issue, as I understand it, was raised was whether this amounted to
40 some sort prior restraint on speech, the necessity to obtain a permit. The function of the
41 permit seemed, at least in our view, to be somewhat unclear as to what out.

42
43 Councilmember Silverman,
44 Cliff, we were just getting to the legal analysis.

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[LAUGHTER]

Councilmember Praisner,
We were speaking very slowly a not quite a list.

Marc Hansen,
I was telling the Cliff and you may want to add, that the origin was as about prior restraint in terms of requiring a permit for a limited duration signs. And that we did not perceive any particularly compelling reason to require the permit for the limited duration signs that exceeded 30 days but were not permanent in their nature. And that that was the origin for eliminating the requirement for the permit, and you may want to add something.

Cliff Royalty,
Obviously to avoid litigation with the ACLU, I guess you've already said that, that's come to play. But yeah, we got a letter from the ACLU, threatening to sue based on action taken against some signs that some people placed on their property in Bethesda. And that was a consideration as well.

Councilmember Silverman,
Okay, so tell us also if you could, and then I'll just turn it back to the Council President for, because we have the Committee recommendations, so if somebody wants to change that, there would be a necessity for substitute. But, talk a little bit Cliff, about constitutional issues involving what can actually be on a sign, can't be on a sign, because we had a discussion in committee, but we've also had community concerns that have been raised about, you know, We Haul, call 1-800 etc. etc. if somebody wants to put that kind of a sign up on their, I mean this all arose out of the Tom Eldridge [ph] scenario, which is not the same to a lay person as the call 1-800 We Haul to take away your junk. But one of the issues was the ability of the county to continue to regulate what I would characterize as commercial content as opposed to non-commercial content, so talk a little bit about that.

Cliff Royalty,
Let's keep in mind here that our sign ordinance which we rewrote 2000, '98, okay. At that time, we did something very important. We made the sign ordinance almost entirely content neutral. Under the First Amendment, you have to be very careful about regulating content of signs. Content based regulations are subject to strict scrutiny by the courts and regulations rarely survives strict scrutiny. So, back in 1998 we wrote the sign ordinance, and that's when we did this limited duration sign permit requirement, and all the provisions that are in there were written at that time. To make the sign ordinance content neutral, and the sign ordinance basically is the one huge exception to content neutrality is the offsite sign prohibition. Which is the provision that we used to get the billboards down, that's the provision that doesn't allow billboards. The Supreme

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1 Court has carved out an exception to content based restrictions for offsite signs. So, to
2 address the question you're raising, the issue of whether you have permits for a limited
3 duration sign has nothing to do with whether people can put offsite signs on their
4 property or not. The We Haul signs, these commercial-type signs that there's concern
5 about more of those being placed on the property, or more of those being placed on the
6 property, if you don't have a permit requirement. Frankly, legally I don't see a
7 connection between the two. Offsite signs are prohibited today and they would be
8 prevented if the Zoning Text Amendment were to pass, regardless, the offsite signs
9 would still be illegal and would presumably be regulated as offsite signs by the
10 Department of Permitting Services. So, the limited duration provision doesn't really
11 relate to the content of the sign so much as it does the length of time that the sign is out.
12 What the intent is, that if the signs going to be there for more than 30 days, then it
13 becomes limited duration, has really nothing to do with the content.

14
15 Councilmember Silverman,

16 Okay, so bottom line is even if the ZTA passes, the ability to continue to in effect
17 regulate the 1-800 U-Haul, because it is considered an offsite sign, meaning unless the
18 person who runs 1-800 U-haul is actually living there, then this ZTA is not going to open
19 up the door to a proliferation of those types of signs throughout our community.

20
21 Cliff Royalty,

22 Legally, there's no connection, practically does that mean that some people will do
23 offsite signs, because there is no permit for limited duration.

24
25 Councilmember Silverman,

26 Right, but what I'm saying is from an enforceability stand point there will still be the
27 ability to enforce the 1-800 call U-Haul signs even if this were to pass?

28
29 Cliff Royalty,

30 Correct.

31
32 Ralph Wilson,

33 The only substantive change in the bill is the elimination of the sign permit other than
34 that; all the same regulations, restrictions, and requirements remain in place.

35
36 Councilmember Silverman,

37 Would apply, and we're not talking, I just want to make sure, we're not talking about the
38 signs that periodically pop up and right of way, and median strips, which would not be
39 covered by this Zoning Text Amendment.

40
41 Cliff Royalty,

42 No, and we do issue permits for signs that are placed in the right of way, and we would
43 continue that permitting process even after this passes. Although, I haven't seen the



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1 most recent changes to it, but we would continue to issue the permits for signs in the
2 right of way. This just relates to signs on private property.

3
4 Ralph Wilson,

5 In fact, if Council decides to approve the proposal, we will have to restore some of the
6 language that the bill as introduced was to be deleted, because it would still need to be
7 retained for the signs in the public right of way. The other issue that had been raised
8 was that this may lead to more commercial signs, which is not the case, since
9 commercial signs are prohibited in the residential zones in any instance.

10
11 Councilmember Silverman,

12 Last question, in terms of Councilmember Floreen's amendment, how would this work in
13 practice?

14
15 Ralph Wilson,

16 It's an enforcement issue, I think.

17
18 Councilmember Silverman,

19 You would have a sign up for 29 days, take two days off, and then you could put it back
20 up again to get down and then put it back up for 29 days?

21
22 Ralph Wilson,

23 That's the way this would be interpreted I'm sure.

24
25
26 Councilmember Silverman,

27 Okay, I just want to understand, okay, thank you Mr. President, I know there is a bunch
28 left.

29
30 Council President Leventhal,
31 Mr. Denis?

32
33 Councilmember Denis,

34 Thank you Mr. President, as a sponsor of the bill, I want to thank Mr. Perez for his
35 cosponsorship and to indicate what prompted me to introduce the bill and what I think
36 it's all about. There are two documents I carry around with me at all time, the Charter of
37 Montgomery County and the United States Constitution...

38
39 [LAUGHTER]

40
41 ...the two should hopefully always be in sync.

42
43 Council President Leventhal,

44 It's a different two depending on the speech that he's giving Mr. Perez

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Councilmember Denis,
Not only the Charter, but the laws that flow from it, and because there is a disconnect between the U.S. Constitution and our sign ordinance, as brought to our attention very succinctly by the American Civil Liberties Union, I think there is no alternative for the Council, but to pass this bill, unless we want to have 30 years of litigation and lose at significant cost to the county taxpayers, the problem, you can see in the U.S. Constitution, the problem for our ordinance, and what happened, of course, is that when the Constitution was being discussed, friends of Thomas Jefferson wrote to him and said what should we do? And he said only support it if they have what we today call the bill of rights. That was adopted, the first ten amendments on December 15, 1791. So that was the deal, if you want the Constitution, you have to have the Bill of Rights. And I always thought that the numbering in the Constitution was very important, so article one describing the powers of Congress, I thought that had some significance. And the fact that the First Amendment is the free speech, I think that's very significant. And let me just read it, because it's very readable, and very well known. It says, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or the press, or right of the people peaceably assemble and petition the government for a redress of grievances." And that's in the constitution, and of course after the civil war, the 14th amendment, equal protection clause in the 14th amendment. The first ten amendments, the bill of rights is binding is binding on the states, and the counties, and the cities, even Montgomery County. And so, I think that it's incumbent upon us, once an actual situation is brought to our attention, to take cognizance of it. So I introduced this bill not in a vacuum, but in response to a situation that occurred in Montgomery County. Residents of Overbrooke Road in Bethesda posted signs protesting the construction of a large replacement house on their street. The county of, the Department of Permitting Services responded by issuing notices to the homeowners that directed them to remove the signs or apply for a permit or face fines. Following our public hearing, the American Civil Liberties Union sent a letter to the Council on September 15, which is included in the packet and points out very clearly that are sign ordinance violates the first amendment. The very next day, I requested that this Bill be drafted and introduced. This Zoning Text Amendment addresses the issue by exempting certain signs on private property from the permit requirement of the county sign ordinance. The County Attorney's office has worked on this matter with the ACLU and they have indicated that this Zoning Text Amendment fully addresses the constitutional issues. And I think there is a statement from the County Executive along the same lines. The statement by the American Civil Liberties Union, I think really cuts to the chase. It's in their testimony, and it's included in the packet. They say it is offensive, not only to the values protected by the First Amendment but to the very notion of a free society that in the context of everyday public discourse a citizen must first inform the Government of her desire to speak to her neighbors and then obtain a permit to do so. The bill repeals the need for a homeowner to get a permit for a limited duration sign. And of course when we discuss some of our legislation we have to refer to Noah Webster and Ralph has given us a limited duration, you know what that means, and sometimes our words and phrases mean something

13

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1 different outside of the context of our statute books. A limited duration sign is defined as
2 a nonpermanent sign displayed on private property for more than 30 days. Currently
3 permits are not required for temporary signs that are posted for less than 30 days. This
4 bill does not allow signs to be located in public rights of way; those signs will continue to
5 require permits. This bill does not change the general requirements for a limited
6 duration signs, nor does it change the requirements by zone. This bill does not alter any
7 other provision of the sign ordinance. The bill does not change any of the provisions of
8 dealing with permanent signs. So I think the ACLU should be commended for pointing
9 out an important First Amendment free speech problem with our current law. The
10 ACLU's legal opinion is to found in there September 15, 2005 letter to the Council. The
11 fundamental point they make is that temporary expressions of free speech on private
12 property should not end after 30 days. And this is an opinion that is supported by our
13 own County Attorney. I'm not aware of any legal opinion that's been presented to us in
14 the packet or elsewhere to the contrary. There's been some chatter about clutter. Well
15 yes, I mean, sometimes in a democracy there is clutter. You see those news boxes that
16 you have throughout the county on various corners. Sometimes you have ten-fifteen
17 news boxes, and some of the publications seem to be a little bit dubious, and some
18 people consider them to be an eye sore, and many people consider them to be clutter,
19 but it's a First Amendment issue. I mean, you look at the parking lot in this building,
20 some of the signs on our own cars may be considered to by other people to be clutter.

21
22 Unidentified Speaker,
23 May be yours.

24
25 [LAUGHTER]

26
27 Councilmember Denis,
28 But, this is part of what it means to live in a free society. There is a clutter; maybe some
29 people view the radio dial as a vast wasteland, or television stations, and all the rest.
30 But that's simply part of the muscularity of democracy. But, the bottom line is that, how
31 in the world can we require people in a Montgomery County to ask the Government to
32 express their opinion on their own property? And so far as, I thank my seat mate for the
33 thought that she has given to this subject, and I struggle to fully understand it, and
34 truthfully, I think it really goes contrary to the bill, because, as I understand my
35 seatmate's amendment, it would not eliminate the permits and fee requirement which is
36 the [gravamin] of the ACLU opinion. And also, as I think that Ralph mentioned there is a
37 serious enforcement issue. Basically I would say the amendment would render the law
38 totally unenforceable, because the only way an inspector would know that a sign has
39 been displayed for 30 consecutive days is by driving by that home every day during that
40 time period. So, that's why I introduced the bill, I appreciate the Committee's
41 consideration of it, and I hope that it can be favorably adopted.

42
43 Council President Leventhal,
44 Ms. Floreen.

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Councilmember Floreen,

Thank you Mr. President. This really isn't about free speech. I wasn't around when the Council adopted the varying levels of regulatory reality that people with signs have to face when they want to put them up in their yard or generally in the public. But, the concern about this one, this legislation has been triggered by, I think, enforcement run amok. Because, I don't think anyone has any disagreement with the need for folks to express their views in a focused way. The real issue, as I gather, is these provisions were put into law in the first place was of the because of the community impact of the clutter that is created by a lot of signs. Now, we're entering the political season. If this passes, there will be no limitations on political signs. So we can all put our yard signs up tomorrow if we want to waste our money. And I think that the decision to enforce this temporary limited duration sign issue against a few people in Brookdale, who had some strong feelings about mansionization, was an abuse. And what we discovered in the course of the committee meeting was that the 30 day limitation on signs is considered to be a 30 day calendar year restriction. Which means that, you know, you can put up a sign for a couple of days every, less than one day week for a course of the year, or you can put them up for a stretch of period of time and that's all that's permitted. Let's agree that enforcement on these things is iffy. It's complaint based. But the issue is to send a message that if you have a message that you really care about, can you control the period of time for which you display that message? And I think the challenge is finding a balance between folks who will keep up a sign for a couple of years, I will admit, have a sign in my yard that I had up for over a year for those pedestrian safety issues We've got war is not the answer signs here and there, and wherever.

Council President Leventhal,

It's the Fifth Amendment that actually protects against self incrimination.

Councilmember Floreen,

Come and get me. But the real issue is what it means for neighborhoods, what the attention to the community that the right to express speech with respect to community issues, what is the balancing point there? And the Committee recommendation was that this really went too far. I think this was an isolated example of a decision to pick a fight with some people in the community that just should not have been initiated, period. Everyone exercises discretion and enforcement. But if the real issue is First Amendment and if there is an interest on this Council in saying we need to do something in response to the ACLU, I did propose an alternative that would say really what was meant, I think, is that you should have you may have these signs up for a period of time. The instruction is to remove them. If you really feel that strongly about them, you can put it back up, but most people really don't. But, the effort would be to find a balancing point between the two initiatives. But the ACLU told us, argued to us in September is the issue of the entire calendar year interpretation. They argued that the current rule is not narrowly tailored and there isn't an ample alternative means of communications. We might take issue with them, over their interpretation, but at the

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1 very least, I think there is a middle ground to address this issue. My solution would at
2 least avoid the ACLU's point that there is a license associated with the exercise of
3 free speech, and the burden of having to go through a permit. I agree with Ms. Praisner
4 that we shouldn't need to go this way in the first place. I think the rules are adequate to
5 protect communities right now. And as I said, this was an isolated instance. But if the
6 Council is inclined to add additional flexibility here, I really would urge that we find a
7 middle ground, rather than saying to everybody amongst ourselves and everyone who
8 is going to be a candidate this year that you can put your signs up all summer long. You
9 can put them up for an unending period, because that is the net result of the legislation
10 before us. And I really don't think anybody wants to see that happen.

11
12 Council President Leventhal,
13 Okay. There are other lights, but just to be cleared, I understand from Mr. Denis that
14 what he really wanted to do was place his bill before the Council

15
16
17 Councilmember Denis,
18 Right, procedurally I was unclear as to what was before us, but I would like if it's
19 possible or whatever the proper motion is, a motion of substitute, to have my bill voted
20 on, up or down if that's appropriate.

21
22 Council President Leventhal,
23 Okay, so the motion is made and seconded that the original proposal from Mr. Denis
24 and Mr. Perez be offered, and is now before the Council as a substitute to the
25 Committee's recommendations.

26
27 Councilmember Denis,
28 Thank you, thank you Mr. President.

29
30 Councilmember Praisner,
31 This provides a wonderful opportunity for folks to debate what is free speech and what
32 isn't, but from my perspective, if you'll go back, I asked staff and they did incorporate
33 within the packet the discussion of what went on when the sign ordinance was modified.
34 And the Council to us was that the discussion and the regulation was totally content
35 neutral. That meant that it didn't matter what was on the sign, whether it said We Haul
36 or it said "don't vote for" or "peace now" that the reviewers, the inspectors or whomever
37 were not supposed to make judgments based on the content. That is the process that
38 was at the beginning and at the onset of the review of the sign ordinance years ago.
39 And, what we were regulating was the length of time in which the sign was going to be
40 placed and the requirements for that placement. I agree with my colleague, Ms. Floreen,
41 that there may be an overzealous issue associated with the Department of Permitting
42 Services, but I am also disappointed that the Department of Permitting Services isn't
43 here today, because they raised within the committee discussion some problems about
44 implementation associated with this modification as well, as to what they can and



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1 cannot do and what they can and cannot look at. The outcome or the extent of this
2 change would be to make no difference as to the length of time of signs and therefore
3 make the sign ordinance from the standpoint of the distinction in length of time posted of
4 signs, moot. And I'm not sure that's a good thing from a general community perspective.
5 The reason for the regulation was to regulate duration, not to look at content. And I don't
6 think the free speech issue is associated with an issue of duration. Because the
7 department is not looking at the content, it is looking at the length of time. And there is
8 nothing within our discussions that limits an individual's capacity to state their views. It
9 just tells them what the process is. And that's true whether you are standing on a street
10 corner and want to make a speech or not. There still are folks who are going to raise
11 questions about the length of time you are there, whether you are impeding someone
12 else's progress, etc. So there is, and we can talk about crying fire in a crowded movie
13 theater, as well. I guess I don't, and I guess the other comment was obviously that the
14 ACLU has weighed in now, but they've had the opportunity over the whole length of time
15 of this legislation to be in place even to be being involved initially in the regulation when
16 it was adopted.. No one raised this issue. I think we may have some overzealousness
17 and we need to look at that. But to eliminate the distinction and the types of signs and
18 the requirements from a standpoint of length of time and not what they say is going to
19 mean exactly what I think the community said, a proliferation of signs that will not be
20 removed and that will add to the clutter in the community. So I agree with Ms. Floreen.

21
22 Council President Leventhal,
23 Mr. Perez?

24
25 Councilmember Perez,
26 Cliff, can I have you reiterate what your legal opinion is regarding the issue at hand
27 here? Because I'm hearing slightly conflicting information about what you think the legal
28 jeopardy is here, and I'd rather just hear directly from you, what is your legal opinion
29 regarding the issues that have been raised by the ACLU?

30
31 Cliff Royalty,
32 We have not expressed an opinion about that. I cannot do it in this forum. To me that's
33 more a matter for a closed session. And I leave that up to you. But my office has not
34 expressed an opinion on it. I told the ACLU I was willing to litigate with them over the
35 issue, but that's my job. But in terms of expressing opinion about the defensibility of our
36 sign ordinance, we haven't expressed an opinion publicly about that. I've just been
37 expressing opinion about what this Zoning Text Amendment would mean and how it
38 would affect offsite signs.

39
40 Councilmember Perez,
41 Okay, I'll get back to your first point in a minute, and if we have to go into closed
42 session, maybe we'll have to do that, because I think it's relevant, okay so what is your
43 opinion as it relates to the second issue?



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1 Cliff Royalty,

2 The offsite sign issue, I don't see a relationship between the two. As I said earlier, the
3 zoning text amendment doesn't affect offsite sign prohibition. The offsite sign prohibition
4 what would remain in effect regardless of whether you require a permit for limited
5 duration signs or not. So, there's no effect on the offsite sign prohibition. Which seems
6 to be the concern that there will be more offsite signs on people's property if you do
7 away with this permit requirement.

8
9 Councilmember Perez,

10 I mean, I'm actually hearing a couple of concerns here though, I'm hearing and I don't
11 want a Tom Perez for County Council, we'll stay hypothetical for the moment...

12
13 [LAUGHTER]

14
15 Multiple Speakers,
16 [INAUDIBLE]

17
18 Councilmember Perez,

19 ...make up your mind, no, what I am hearing is that there's another issue here which is
20 that we don't want Tom Perez to be able to put up his yard sign tomorrow. And I guess
21 the question, I'm thinking about, I mean there's a number of issues, and I guess I'll put
22 the policy issues aside, noting parenthetically that one of the ways Quame Brown won
23 an insurgent campaign against an entrenched incumbent was through the use of yard
24 signs in place long before the 30 day period began. When you're underfunded, it's a
25 good visibility mechanism. Noting that parenthetically, we'll put that aside. If I were
26 prohibited from doing that and I walked into court and said I think that's a violation of my
27 First Amendment right to put a Tom Perez sign in my front yard tomorrow, do you
28 believe that we are legally vulnerable? We are limiting the duration of that sign.

29
30 Cliff Royalty,

31 First of all, we don't regulate political signs, as such, keep in mind.

32
33 Councilmember Perez,

34 Well, but that's what I just heard.

35
36 Cliff Royalty,

37 No we don't, it doesn't say anything about political signs, it is the amount of time the
38 sign is on the property is the determining factor whether it's temporary or limited
39 duration. I'm saying the content, other than the offsite sign prohibition, the content is
40 irrelevant, no it doesn't matter who's name is on the sign, I just want to keep that context
41 here. Because it is neutral. But the issue is do you want to keep the sign there for more
42 than 30 days, if you do, you need a permit. So you need to come to the county, pay
43 your fee, get your permit, if you want to leave the sign there for more than 30 days, it's
44 not prohibited, you just need a permit.



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Councilmember Perez,
What is the current fee?

Cliff Royalty,
\$30, something like that.

Ralph Wilson,
\$30, a little less than \$30 for a limited duration permit.

Cliff Royalty,
One year, One year and then you can come back at the end of that year and re-up.

Councilmember Perez,
So if I want to put up a hundred Tom Perez signs, Kuame Brown wanted to do that, it would have cost him a fair amount of money.

Cliff Royalty,
The number of signs is not limited, but the total area of the signs is limited, so you can only have so many signs.

Councilmember Perez,
I don't have an answer to the first question I asked when we were hearing, I think conflicting descriptions of what your views are on the real crux of the legal issue here.

Cliff Royalty,
I haven't expressed those views.

Councilmember Perez,
No, you haven't. I think those are relevant to the analysis here, I don't know how we'd want to do this. But I think part of what motivated me here was I didn't want to have son of billboards, you know, where we have yet another flood of litigation where we are going to be on the hook for attorneys' fees and other things. And, frankly as Mr. Denis has pointed out, sometimes the First Amendment is inconvenient and clutter is one of the aspects that make the First Amendment inconvenience to some. There are many other examples of sometimes the inconvenience of the First Amendment. And having prosecuted cross burnings cases, I am well aware limitations on what we can do, and what we can't do, but I do believe that the First Amendment is what separates us from so many others, and that's one of the reason I supported this. I'll note parenthetically, I did get a memo; I just got an e-mail from George Herbert Walker Bush wondering whether Mr. Denis is a card carrying member of the ACLU. So once again, the Martians have landed. And anybody who wants to try to figure out from the Martians who have just landed who the Republicans and who the Democrats are, I defy you to try and answer that question. And, I'm at a little bit of a loss here, because I understand your



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1 concerns, but I believe, and I'm not extrapolating anything you said on this, but I do
2 believe that we can vote the bill down and get sued and get socked with attorneys' fees
3 and change it that way, or we can change it preemptively and avoid that issue. And yes,
4 there are some consequences to this as it relates to what people can do on their own
5 property with signs. Yes, there are consequences in that setting, and I think those are
6 part of what we live with in the First Amendment, which is why I am happy to support
7 what Mr. Denis has done to be cosponsor the bill and to seconder or thirder of the
8 motion. So, I don't know where we are going right now, but I do think that some of the
9 questions that haven't been answered are questions that may be relevant to the
10 analysis. Because, at least in other settings, when we did small business reserve, for
11 instance, we had legal opinions clearly on the table. You had expressed some concerns
12 Marc. We had another legal opinion that disagreed. When we did the Canadian drug
13 issues, we had the various legal opinions on the table and we made a judgment about
14 that. I mean, we're in a little bit different situation here and I don't know that we're as
15 well served as we try to make this decision.

16
17 Council President Leventhal,
18 Mr. Andrews.

19
20 Councilmember Andrews,
21 Thank you. I'm going to support the Zoning Text Amendment. Democracy is messy. It's
22 not tidy. And one of the features of democracy is it does not take place in a vacuum. It's
23 not completely; it's certainly replete with conflict. And so any restriction on the First
24 Amendment has to pass as the Supreme Court has ruled repeatedly, a very high test.
25 And limiting clutter is not a compelling argument for limiting free speech. That is, it just
26 does not pass the test. It doesn't pose any kind of imminent threat to public safety; it is
27 something that protects the right of all of our constituents to express themselves in a
28 way that certainly poses no harm to others. And I think that this amendment is
29 necessary in order for the county law to be constitutional.

30
31 Council President Leventhal,
32 Mr. Subin.

33
34 Councilmember Subin,
35 Well, I think that reducing clutter is something that one could form an argument that
36 would support the thought that the restriction was constitutionally valid, and it could
37 overcome strict scrutiny with that, since it was, since it was neutral. I think it's a very
38 weak argument. We do make a distinction that the courts have made a distinction with
39 content between the commercial and the political. And we're simply dealing with the
40 political piece here, which brings me right back to what Mr. Andrews just said, and I
41 think it was the second time, may have been the second time it was mentioned, that
42 democracy can be messy, you know, but give me that mess any time. The way the
43 ordinance has been interpreted in the past may be one of the problems. But if folks want
44 to get into the time, place, manner issue, Well, I'll tell you what, I'll put Tom's sign up on

20

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1 my lawn for 30 days, and then I'm going to take it down and put it on my neighbors'
2 lawn.

3
4 [LAUGHTER]

5
6 Councilmember Subin,
7 And we'll just go right down the street with that so that Tom's sign can be there all year.
8 It is a game that we can play. But you know we want, we want free speech, and we
9 want democracy as Mr. Andrews has stated it on the one hand, but we're not willing to
10 pay the price, and that is symptomatic of a lot of things. We want the democracy; we're
11 not willing to pay the price. And I think the bill before us says yeah, to some extent we're
12 willing to pay the price. And frankly, if the price is me having to see Tom Perez's lawn
13 sign on my neighbors' lawn who's just trying to get back at me.

14
15 [LAUGHTER]

16
17 Council President Leventhal,
18 I just want to know what he is running for Mr. Subin?

19
20 Councilmember Subin,
21 Mr. President that is one of the great questions that is bedeviling all of us, but you know
22 if you just puts up Tom Perez, his name gets out there, or just Tom.

23
24 [LAUGHTER]

25
26 Councilmember Praisner,
27 That doesn't work, we found that out. Ralph knows.

28
29 Councilmember Subin,
30 So, I will support the bill.

31
32 Council President Leventhal,
33 Okay. Somebody asked me recently, what do I do as Council President. One of the
34 things that I do is I count, and I count the same people over and over again in I can
35 count, and a lengthy debate on this matter is not going to change the outcome, Mr.
36 Knapp.

37
38 Councilmember Knapp,
39 I have no lengthy debate to add to this. I actually came to this with no preconceived
40 notions, wanted to hear all of the discussion, my only concern is that it sounds from
41 what I heard from Mr. Royalty, that there is still some information that we have not yet
42 heard, and I would actually be interested in hearing it just to make sure that we are as
43 fully informed as possible. Did you not indicate there was information that you would
44 only share with us in a closed session?



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1
2 Cliff Royalty,
3 Well, I offered you the opportunity to go in closed session.
4

5 Councilmember Knapp,
6 I'm not necessarily looking for an opportunity to be in closed session, but if there is more
7 information to be garnered?
8

9 Cliff Royalty,
10 I'm not telling you what.
11

12 [LAUGHTER]
13

14 Multiple Speakers,
15 [INAUDIBLE]
16

17 Council President Leventhal,
18 I'm just one Councilmember, but if a motion is made to go into closed session, I will vote
19 against it.
20

21 Councilmember Knapp,
22 All right, I just want to make sure we're fully, I just want to be as fully informed as
23 possible, so I don't know what other information is out there to be garnered.
24

25 Cliff Royalty,
26 Like I said, the only thing is, I guess opinion as to whether our law is defensible as not in
27 I hadn't expressed that because that's something we would normally do in a closed
28 session. You're the client, you are entitled to waive Attorney-Client privilege, it's been
29 done in the past, as Mr. Perez pointed out, but I don't know if the Council as a body
30 wants to get in that discussion publicly. So, that's why I hesitated to answer the
31 question.
32

33 Councilmember Knapp,
34 I would just as soon have a discussion in open session if there's information, more
35 information to be garnered, I don't have any particular notion to be in closed session,
36 but...
37

38 Council President Leventhal,
39 If I may Mr. Knapp, my understanding was that in response to Mr. Perez's question, Mr.
40 Royalty said he might have advice for us concerning the application of the law as it
41 stands today in closed session. I don't believe his advice about whether or not we are
42 exposed pertains to the bill introduced by Mr. Denis and Mr. Perez. I believe his advice
43 as to whether or not we are exposed pertains to the law as it is now. And without getting
44 ahead of Mr. Royalty, my understanding is is that if the bill proposed by Mr. Denis and

22

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1 Mr. Perez passes the Council, which again I can count, a noteworthy number of
2 Councilmembers have already stated their support for it, I think that moots the advice
3 that Mr. Royalty was going to give us.
4

5 [LAUGHTER]
6

7 Cliff Royalty,
8 That's correct.
9

10 Council President Leventhal,
11 Okay, Ms. Floreen.
12

13 Councilmember Floreen,
14 Well, I'm on dangerous ground here, because I'm going to ask a question I don't know
15 the answer too. But Cliff or Ralph, are you aware of what the rules are in other
16 jurisdictions on this subject?
17

18 Ralph Wilson,
19 No, not off the top of my head.
20

21 Cliff Royalty,
22 No, not off the top of my head. I've looked at a lot of sign ordinances in my day, but I
23 don't recall one from another jurisdiction with this exact type of language, but they may
24 be out there. I can't think of one, though.
25

26 Council President Leventhal,
27 Mr. Knapp.
28

29 Councilmember Knapp,
30 I just wanted to follow-up, I to can count, and I wasn't on any side of this issue and I
31 appreciate the remarks of all my colleagues on this issue today. I too am not compelled
32 that the notion of clutter is a compelling reason for us not to do something. I think we
33 have a smart community and very well educated community and if people choose not to
34 put signs up in their yard, they will choose not to, and if they choose to, then they if we
35 give them that opportunity, and so I think that what's been introduced makes sense. I'm
36 a little concerned that we just maybe had more information than we haven't heard. But
37 that not withstanding, I think that the bill before us probably makes a lot of sense.
38

39 Council President Leventhal,
40 Thank you Mr. Knapp. I just want to say, Mr. Beach is here, I hope the message will go
41 back to the Department of Permitting Services they should have been here for this
42 discussion. You know, one can say that laws are there to be enforced, but I know that in
43 this case with respect to the signs that were embarrassing to a member of the Somerset
44 Town Council, the enforcement was much more vigorous than it is in my community of

23

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1 Takoma Park, where there are many, many, many signs, people still have [Carrie
2 Edward] signs up in their yard that have never gone down. And a whole lot of the issue
3 advocacy signs have stated up more than 30 days. Now, it may be that many agencies
4 enforcement is triggered by complaint, and that actually makes some sense, but I would
5 love to know the circumstances under which the DPS swoop down on these homes in
6 Somerset, and what triggered that. It would be interesting to know that, and if they were
7 here I would ask them, but they're not here. And it's a time and great interest in the
8 enforcement capacity of DPS, and I'm sorry they're not here, because I for one am
9 really trying to learn more about their enforcement capacity and their enforcement
10 procedures. And they should have been here, and I'm sorry they're not. And I'm going to
11 vote with Mr. Denis on this one. I hope that we don't see premature campaign sign
12 eruptions, but it's not something you can really control. And as Mr. Perez points out in
13 the District of Columbia, which is very close to my house, there's campaign signs up
14 now and there were campaign signs of all 2005 for candidates running in the 2006
15 primary and the 2006 general. It's a small amount of clutter; it's not a huge amount of
16 clutter. Lurking in the background of a lot of our views on this is the fact that we have
17 perennial candidates in this county who we don't like, and we are concerned that
18 perennial candidates will take this opportunity to have twelve month a year
19 advertisement for their favorite cause. And the truth is that is going to happen when we
20 pass this, because the votes are there. It may be an unfortunate outcome. From my
21 standpoint as a candidate this year, I'll be happy to talk with other candidates about
22 what is seemly and what is not an imposition on the voters in terms of my own
23 campaign signs. I'll be happy to have some sort of cooperative agreement with other
24 candidates if their interested in having that discussion with me. But I don't see how the
25 law restricts the ability of my neighbors to have 12 month a year protest, or support of
26 the war in Iraq or any other issue, I can't feel comfortable saying you can only express
27 that point of view for 30 days at a time. So, I'll vote with Mr. Denis, and we're now ready
28 to vote.

29
30 Ralph Wilson,
31 Kind of just clarification on the motion that it included the retention of those lines 18 and
32 21, and 20 through 35, which are needed for the issuance of permits and signs in the
33 public right of way.

34
35 Council President Leventhal,
36 Noted. Thank you. So, those in favor of the amendment offered by Mr. Denis will signify
37 by raising their hands. It is Mr. Denis, Mr. Subin, Mr. Silverman, Mr. Knapp, Mr.
38 Andrews, Mr. Perez, and myself. Those opposed, will signify by raising their hands. It is
39 Ms. Floreen and Ms. Praisner The motion carries 7-2, and now we will just pass by
40 consent the underlying ZTA as amended. We need a roll call on the ZTA, okay go
41 ahead.

42
43 Council Clerk,
44 Mr. Denis?



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1
2 Councilmember Denis,
3 Yes.
4
5 Council Clerk,
6 Ms. Floreen?
7
8 Councilmember Floreen,
9 No.
10
11 Council Clerk,
12 Mr. Subin?
13
14 Councilmember Subin,
15 Yes.
16
17 Council Clerk,
18 Mr. Silverman?
19
20 Councilmember Silverman,
21 Yes.
22
23 Council Clerk,
24 Mr. Knapp?
25
26 Councilmember Knapp,
27 Yes.
28
29 Council Clerk,
30 Mr. Andrews?
31
32 Councilmember Andrews,
33 Yes.
34
35 Council Clerk,
36 Mr. Perez?
37
38 Councilmember Perez,
39 Yes.
40
41 Council Clerk,
42 Ms. Praisner?
43
44 Councilmember Praisner,



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1 No.

2
3 Council Clerk,
4 Mr. Leventhal?

5
6 Council President Leventhal,
7 Yes. The ZTA carries seven to two. Okay we next have introduction of the several
8 ZTAs, beginning with ZTA 06-01, Rural Village Center Overlay Zone. We need a
9 resolution to establish a public hearing for February 28th at 1:30; the motion is made
10 and seconded. Those in favor of having a resolution on ZTA 0601 will signify by raising
11 their hands. It is unanimous among those present. Next introduction of ZTA 06, Ms.
12 Floreen, you had a comment?

13
14 Councilmember Floreen,
15 Yes I do, I have a problem with the fact that none of these first three ZTAs have been
16 reviewed by the screening committee.

17
18 Ralph Wilson,
19 In fact we just received them Friday.

20
21 Councilmember Floreen,
22 We just received them and there are some significant issues, I think, in them that I hope
23 the screening committee will look at, particularly the use of the applicable master plan to
24 set standards for the zoning ordinance.

25
26 Ralph Wilson,
27 I guess at this point-

28
29 Councilmember Floreen,
30 Specificity, I think this is a bad practice to have these things introduced without that
31 screening committee and input. And I would ask that these not be put on the agenda
32 again until they have gone through the Screening Committee.

33
34 Council President Leventhal,
35 Mrs. Praisner.

36
37 Councilmember Praisner,
38 I wanted to piggyback on Ms. Floreen's comment, we have, I don't know how many
39 times said that when the master plans come over, they should come over with the
40 Zoning Text Amendments. Having gone through whatever procedures are necessary,
41 including screening committee review. So I would hope and I understand the calendar
42 crunch of having to deal with Damascus, any land use issues given that it is a an
43 election year, we've certainly heard that this morning. My concern is for the packet that
44 is prepared for the public hearing, which means the community may log on and access

26

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1 that packet, I would hope that by that point Ralph, the Screening Committee we'll have
2 reviewed those and you could, on the cover sheet, make notations of any changes that
3 the Screening Committee has made to the item that is being introduced today, so that
4 the community, at least for the public hearing packet, understands what variations there
5 may be based on what we are seeing now. Because the community normally ...

6
7 Ralph Wilson,
8 We'd more than happy to do that in advance, but these just came out Friday.

9
10 Councilmember Praisner,
11 I understand that, and I think they came up Friday, because some folks were raising the
12 question of why have we seen the zoning text amendments, which gets back to my
13 original comment, and Ms. Floreen's which I agree with totally.

14
15 Council President Leventhal,
16 Thank you, next up is Zoning Text Amendment 06-01, Rural Village Center Overlay
17 Zone, we need a resolution to establish public hearing for February 28th, is there a
18 second? Motion is made and seconded, those in favor of the resolution to establish a
19 public hearing on ZTA 06-01 will signify by raising their hands. It's unanimous among
20 those present. Next up is ZTA 06-02 Mixed Use Town Center Zone revisions, we need
21 a motion to establish resolution and we need a second. We have a motion and a
22 second. And those in favor will signify by raising their hands. And next up and it's
23 unanimous among those present. Next up is ZTA 06-03 Rural Neighborhood Cluster
24 Zone, TDR option, need a resolution to establish a public hearing February 28th Motion
25 is made and seconded, those in favor will signify by raising their hands, it is unanimous
26 among those present. Next up is ZTA 06-04, Rural Neighborhood Cluster zone, Rural
27 Open Space, sponsored by Ms. Praisner. Ms. Praisner.

28
29 Councilmember Praisner,
30 I would like move introduction, adoption of the resolution. And also comment that this
31 comes out of community questions and concerns about how one designates and
32 protects the rural cluster areas that have been designed for rural open space and is
33 consistent, I think with the language that is was at least discussed when we adopted the
34 upper Rock Creek master plan. So, I'll move adoption of the resolution.

35
36 Council President Leventhal,
37 Okay. Motion is made and seconded. Those in favor of the resolution establishing a
38 public hearing will signify by raising their hands. It is unanimous among those present.
39 The Council stands in recess until 1:30 p.m.



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1 Councilmember Praisner,

2 Good afternoon, ladies and gentlemen, I think we'll start, Mr. Leventhal should be here
3 shortly. Good afternoon, ladies and gentlemen, this is a public hearing on Zoning Text
4 Amendment 05-22. Which would amend the Zoning Ordinance to allow property located
5 within a central business district to be classified in the Transit Station Mix --TSM -- Zone
6 under certain circumstances, and generally amend provisions related to the TSR and
7 TSM zones. The record will close immediately at the end of the hearing. The PHED
8 Committee work session is tentatively scheduled for January 26th at 9:30 a.m. Please
9 call (240) 777-7900 to confirm. Before beginning your presentation, please state your
10 name and address clearly for the record and spell any unusual names. Lisa Rother, you
11 want to come forward too? Lisa Rother first and then Greg Russ for Park and Planning.
12

13 Lisa Rother,

14 Yeah, thank you very much. For the record my name is Lisa Rother I'm representing the
15 office of the County Executive. Thank you for the opportunity to comment, and we
16 believe the amendment is appropriate to allow mixed use development on sites in and
17 adjacent to central business districts. This will include sites in downtown Bethesda,
18 Friendship Heights, and other situations where the text amendment will be applicable.
19 On the basic premise of the amendment is to allow logical development projects to
20 proceed when development sites when different zoning categories are being combined.
21 In some cases when development sites are combined approval of the split zoned
22 project could be required, and while it may be possible to process such an application it
23 would be complex and could be remedied by this text amendment. The amendment will
24 serve to streamline the development review process while achieving master plan
25 recommendations in specific instances. The combined development project on Lot 31
26 and Lot 31A in Bethesda is one example of where this streamlining could occur. It's a
27 public-private effort that will meet master plan goals for affordable housing, improving
28 pedestrian safety, and providing public parking. The county's a partner in this project
29 and supports it as we might support additional split zone projects that may come up
30 from time to time. We urge your support of the amendment, and thank you for hearing
31 us today.
32

33 Council President Leventhal,

34 Yeah, Greg Russ, go ahead.
35

36 Greg Russ,

37 For the record Greg Russ from Montgomery County Planning Board. The Montgomery
38 County Planning Board reviewed Zoning Ordinance Text Amendment number 05-22 at
39 its regular meeting on January 19th, 2006. The Board recommends that the proposed
40 text amendment be approved with modifications included in those modifications is a
41 recommendation to also apply the amendment to the transit station residential zone.
42 The proposed Zoning Text Amendment as submitted would allow the TSM zone to be
43 used within Central Business District if the property immediately adjoins another
44 property outside a CBD that is eligible for classification in the TSM zone, or separated

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1 only by a public right-of-way from property outside of CBD that is eligible for
2 classification in the TSM zone. As mentioned the Board recommends approval of the
3 Zoning Text Amendment but further recommends that this amendment also apply to the
4 TSR zone for the same rationale as set forth for the TSM zone. Including the flexibility
5 that it would allow consideration of transitional projects on the edge of the CBD under a
6 single zoning application when split zone properties are a single development project.
7 Combining properties to establish a more unified development is typically the goal in
8 sound land use practice. This text amendment would simply make properties eligible for
9 filing a local map amendment and would not grant any additional entitlement rights. The
10 burden would remain on an applicant to satisfy all the requirements necessary to have
11 the rezoning applications approved. The subject proposal would also promote good
12 public policy in that streamlining the process without compromising public input where
13 the circumstances warrant a unified zone and zoning process for a development project.
14 The intent provisions of both the CBD and transit station zones encourage innovative
15 design schemes that place emphasis on master and center plan recommendations,
16 especially in mitigating impacts to surrounding non-CBD or transit station areas. The
17 development standards and permitted uses of both types of zones are comparable. In
18 fact the usual progression of intensity places the transit station zones as transitional
19 areas between the CBD's and the non-CBD residential areas. With this in mind there
20 should be no negative impacts to the surrounding areas by allowing the transit station
21 zone provisions on an adjoining CBD zone. Thank you.

22
23 Council President Leventhal,
24 Okay, thank you. I guess I'm a little confused about how the panel is now. We have
25 some people that are not here yet is that it?

26
27 Councilmember Praisner,
28 No, I just did...

29
30 Council President Leventhal,
31 Should we take questions now or we just didn't call up other speakers.

32
33 Councilmember Praisner,
34 I didn't call up other speakers

35
36 Council President Leventhal,
37 Okay, let's have Ann Martin. Is Marty Hutt here, and Wayne Goldstein? Come on up
38 and Jim Humphrey come on up I don't see -- oh, Doug you're here -- Doug Firstenberg
39 too. Good, I didn't see you. There's a lot of people. I didn't know, I'm sorry I didn't know
40 if there were questions. Do Councilmembers have any questions for Mr. Russ or for Ms.
41 Rother?

42
43 Councilmember Praisner,
44 I do.



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1
2 Council President Leventhal,
3 Okay.

4
5 Councilmember Praisner,
6 No, no, no, they don't have to...

7
8 Council President Leventhal,
9 Why don't we do you now and as questions come we'll call Mr. Russ and Ms. Rother
10 back, Ann Martin. I understand you go next.

11
12 Ann Martin,
13 Thank you, for the record Ann Martin from the law firm of Linowes and Blocher, here
14 today in support of the Zoning Text Amendment. I just wanted to repeat some of the
15 important points that Mr. Russ brought up, regarding that this is a Zoning Text
16 Amendment about process, it's not changing any development standards, it's not
17 allowing the CBD zones to go out further into the adjoining residential properties, it's not
18 expanding the TSM zone except inward into the central business district zones. I
19 thought it was important to clarify that for those not as familiar with the process of
20 Zoning Text Amendments and the TSM zone. This will enable the Council to look at a
21 project that involves property in the central business district and outside the central
22 business district in the TSM recommended zone as one project, instead of looking at
23 the project tunnel vision not being able to comment or have on the record for that case
24 the entire project. So, this is a Zoning Text Amendment about process. It's not
25 approving any particular project or expanding any particular zoning standards. And we
26 just wanted to testify in support of the Zoning Text Amendment and are available if have
27 you questions, thank you.

28
29 Council President Leventhal,
30 Okay, Mr. Hutt.

31
32 Marty Hutt,
33 I think Mr. Firstenberg is ahead of me.

34
35 Council President Leventhal,
36 Well, we were going out of order, Mr. Firstenberg asked to let Ms. Martin go first, but
37 Doug if you're ready, go ahead.

38
39 Doug Firstenberg,
40 Doug Firstenberg, Principle of the Stonebridge Associates for the record and, [inaudible]
41 Hoffman and Stonebridge Associates formed the joint venture, and the selected
42 developer for Lot 31 to create a public-private partnership with the county. What I
43 wanted to comment on was a experience that we had going through a project that was
44 split-zoned at Chevy Chase Center and had the CBD zone and had the TSM zone, and

30

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1 we went down this split process which was ultimately brought back together by site
2 plan, but as we went through the process and we were going in front of for example the
3 Hearing Examiner and would talk about the TSM, and someone would ask the question
4 about something ten feet away, and say, "Well I want to ask about what's going on in
5 the CBD." The Hearing Examiner would say "No, that's not on the record you can't
6 answer that", and we were trying to explain the project to everybody. So, having been
7 through this experience we really think it's a much better process to bring it back
8 together. And in particular to Lot 31, one of the key elements of our plan was a
9 realignment of Woodmont Avenue which would move the road to the west which would
10 then actually create on Lot 31a, or the land east of the new Woodmont Avenue a split
11 zone site, therefore, we would have a site that would have to meet TSM and CBD
12 where we're planning to have a single building. We haven't quite figured out how to do
13 that either. We really do believe this project should be reviewed as a single plan. We
14 don't have any benefits as a developer in terms of density, in terms of relief from
15 development requirements, we think it provides a better path of review, a single path of
16 review that would come through the Council back to site plan at Park and Planning. We
17 think that's better for us, we think it's better for the community, we think it's better for the
18 county. Thank you for your time.

19
20 Council President Leventhal,
21 Thank you. Mr. Hutt.

22
23 Marty Hutt,

24 Thank you, my name is Marty Hutt with the firm of [inaudible] and Brewer [ph]. With me
25 in sharing my three minutes is [Nathan Landau] who owns -- he and his family members
26 own the Seasons Apartments, which is adjacent to the Parking Lot 31A. I'm hearing
27 everything regarding that it's good for the process and that's fine but we're also knowing
28 that the pace of that text amendment being introduced on December 13th and Planning
29 Board consideration on January 19th, 2006. Your consideration today, a work session
30 on the 26th that, and I don't know what your adoption date next is, but it's Lot 31 and Lot
31 31A that we believe is pushing the pace of this. That's not saying it's wrong but let's be
32 candid, that's what is doing it. I'm going to turn to Mr. Landau because, although that
33 claim is not before you, the comments is that this text amendment and hopefully to
34 mitigate impacts to non-CBD property, but as proposed and shown currently on various
35 schematic drawings, which were only available during the RFP process, what is
36 proposed on Parking Lot 31A. Not Parking Lot 31 where they're only proposing a three
37 to five story, but on Parking Lot 31A, where the entrance to that, to the county garage
38 and to the private parking spaces for the development are immediately, almost
39 immediately adjacent to Mr. Landau's building. I'm going to let him speak to you as to
40 his concerns with regard to that. We look forward to discussing these issues with the
41 applicant, with the Planning Board staff to work them out. We think they're all capable of
42 working out prior to today and earlier they have not been able to communicate with one
43 another. I made a call one meeting was set up but that's not enough. When we're



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1 looking forward to working with everyone, but I'm going to let Mr. Landau talk about the
2 impact of the proposed entrance on his Seasons Apartments.

3
4 Nathan Landau,

5 Thank you. Thank you for allowing me to be here. I know my name is not on the record
6 but Marty has agreed to give me couple of minutes of his time.

7
8 Council President Leventhal,

9 He only gets three, Marty took two and a half.

10
11 Marty Hutt,

12 Talk fast.

13
14 Nathan Landau,

15 I'm going to try to make it quick. That's a record, the other record is that after developing
16 here for 45 years in this county, this is the first time I have, that I am in this position of --
17 I don't want to say opposing this plan, but maybe recommending that it be really a hard
18 look taken. It came to our attention late. So we haven't had a chance to really do very
19 much. But after seeing it just a few weeks ago we voiced some major concerns with the
20 traffic that's going to be created on Bethesda Avenue. With this plan that you have that's
21 been submitted of course, that doesn't show. And hopefully that will all come to you at
22 the proper time. But there are 200 cars in the garage at the Seasons. There are 400
23 cars in the Hank Goldberg's [inaudible] building across the street. And there is 1,700 --
24 1,570 cars proposed for your new garage. Now, in all of the discussions with the
25 developers and the presentations we're not hearing much about that is going to do to
26 Bethesda Avenue, but there are tremendous problems created by it because it's such a
27 short street. With all of these driveways and garages emptying into it at critical times
28 with all these cars, it's just not going to work. So, we have engaged Ed [Papasia], who I
29 think has credibility here in the county, and we're going to present another study on
30 Bethesda Avenue. The main concern is this garage that's going to be dumping these
31 cars out in such a short distance to get to a traffic light either at Wisconsin or
32 Woodlawn.

33
34 Council President Leventhal,

35 Okay, Nate I'm going to stop you at that point. Let's call on the witnesses if
36 Councilmembers have questions for you, stay there, maybe you'll get more time to
37 address anything in response to questions. But let me move on to Mr. Goldstein.

38
39 Wayne Goldstein,

40 I'm Wayne Goldstein President of the Kensington Heights Citizens Association, here to
41 comment about a ZTA full of potential unintended consequences to change to the
42 country's most complex Zoning Ordinance. And I'm not even going to pretend to know
43 whether the unintended consequences are the likely consequences because it is
44 complex, and I just learned about this last night. So, I'm here to comment because of

32

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1 the impacts on Wheaton and other CBD and apparently non-CBD areas of the TSR
2 zone, there should be a lot of other people here or other organizations that should have
3 been notified about this, which just goes to once again the problem with the process of
4 how ZTA's are introduced and vetted, and how they're sometimes hurried along and
5 sometimes come go to the County Council before they go to the Planning Board. So,
6 my colleague Jim Humphrey is going to talk more about the consequences. But I
7 wanted to comment on the process and how just as the county, just as the Planning
8 Board is turning themselves inside-out trying to reform their processes to make them
9 more citizen friendly, I'd like the County Council to start thinking about that, and to start
10 with the ZTA process. For example, everyone needs to know about the possible impact
11 of any ZTA on their community and there has to be effective notice given and when they
12 hear about it, either directly or secondhand to be able to go to your website or the
13 Planning Board's website to be able to look up the ZTA and be able to read about it in
14 plain English. Something that anybody could understand. A person that knows nothing
15 about anything in Montgomery County could read it and understand the potential impact
16 on their neighborhood. And so, that's my recommendation I would like to make.
17 Fortunately I don't need more than 3 minutes to say it, but sometimes need more than 3
18 minutes but we don't have that here anymore at the County Council. If there were a lot
19 more people here for an afternoon hearing, I understand there are a limited amount of
20 slots and there would be a problem about more people signing up, because of the way
21 you pack so many together and have all sorts of restrictions. I don't know that you could
22 have a process like the Planning Board has, where you just show up and sign up, but I
23 wish it were possible, because sometimes it could be difficult playing phone tag to try to
24 sign up for a hearing that a person hears about at the last moment. So, that's about all I
25 have to say for now. Thank you.

26
27 Council President Leventhal,
28 Mr. Humphrey.

29
30 Jim Humphrey,
31 My name is Jim Humphrey I currently serve as Chairman of the Planning and Land Use
32 Committee of the Montgomery County Civic Federation, and I'm testifying as an unpaid
33 volunteer representative of the Federation. I appreciate the opportunity to testify before
34 you today. Because when I called Ms. Harriston, she told me that the list was full for this
35 hearing.

36
37 Council President Leventhal,
38 I was happy to agree to add you, Jim.

39
40 Jim Humphrey,
41 Thank you, thank you, Council President.

42
43 Council President Leventhal,
44 You're welcome.

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1
2 Jim Humphrey,

3 I'm not here to discuss the provisions of the ZTA that deal with changes to the TSM
4 zone category, that may surprise some of you, but we're concerned with the change this
5 ZTA would make to the applicability of TSR zoning. Our concern about the TSR change
6 proposed in the ZTA 05-22 centers on the difference between the use of the word "and"
7 which could be represented by a comma and the use of the word "or". The current
8 provision in the zoning ordinance with respect to TSR zone use which is in section 59C
9 8.21(a) states that: "both the TSR and TSM zones are intended to be used in Transit
10 Station development areas," as defined in the interpretations definition section. And the
11 TSR zone may also be used in areas adjacent to the central business district, comma,
12 within 1,500 feet of a metro station. And that last part of that sentence, the comma
13 stands in for the word "and" to mean that TSR zone may also be used are adjacent to
14 CBD's, and within 1,500 feet of a metro station. With the addition in the ZTA of the word
15 "or" on line 20 the TSR zone could then be used in areas adjacent to CBD's "or" in
16 areas in the county that are within 1,500 feet of the metro station. Now that change
17 allows, and forgive me, I'm going to make a change to this sentence, I did it very
18 quickly, you'll understand why. This change would allow TSR zoning to be used
19 anywhere within central business districts as long as within 1,500 feet of a metro
20 station, a use not currently allowed. And it would allow TSR zoning to be used in any
21 areas of the county, within 1,500 feet of a metro station, regardless of whether such
22 areas adjacent to a CBD as is currently required. So, when Mr. Russ was talking to you
23 about this density level being compatible with CBD density, well this could be used at
24 Forest Glen, Glenmont, Twinbrook every metro station in the area that has properties
25 within 1,500 feet could apply for TSR zoning. We don't believe that's the intent of the
26 sponsors of the ZTA, Councilmembers Perez and Denis. If it is their intent then the Civic
27 Federation believes that there was inadequate notification of residents in all those
28 communities which would be affected, alerting them that their master plans would be
29 changed by enactment of this ZTA, and allowing them opportunity for input today. We
30 therefore request that the word "or" be struck from line 20 of ZTA 05-22. Thank you.

31
32 Council President Leventhal,

33 Okay, I know that because speakers were added there was a shortage of chairs, and so
34 let me suggest then if Councilmembers have questions for this panel let's take those
35 now and still in order to ask questions of Mr. Russ and Ms. Rother. I'm going to begin by
36 offering Nate Landau another minute or less, if he can -- just if there were any other
37 points he had not been able to get across.

38
39 Nathan Landau,

40 No, that's fine and I apologize, because I'm not sure this is the right place for us but
41 since the process was moving along, and there has been a Planning Commission
42 hearing we thought we would get on the record to let you know we would provide further
43 information as soon as our studies are complete.



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1 Council President Leventhal,
2 Okay, the PHED Committee is scheduled to meet on January 26th, and the PHED
3 Committee, and the PHED Committee staff will be happy to take any and all input prior
4 to that committee's work. Okay, again questions for this panel, Mr. Perez.

5
6 Councilmember Perez,
7 Thank you. Mr. Landau, I just wanted to reiterate I know the intent of our -- maybe I will
8 speak for myself, I'll let Mr. Denis, he's very able -- the intent of what we're doing here is
9 not to prohibit you from voicing your concerns. The intent is obviously to create one
10 process for voicing those concerns and I look forward to hearing about those concerns
11 in much greater depth. But I do want to underscore that the issues that you have raised
12 today, which are very fair issues to raise, are issues that if the Zoning Text Amendment
13 is adopted you will have a very, very ample opportunity to raise. So, I want to make sure
14 it's clear that certainly it wasn't our purpose in introducing this to create a situation
15 where people who are legitimate stakeholders in this do not have an opportunity to be
16 heard. So, I wanted to make sure it was clear to you what we were trying to do here.

17
18 Nathan Landau,
19 Thank you, I was just hoping that this process, this zoning process doesn't aggravate
20 the conditions that we're all going to be really concerned about when we look at the
21 plan.

22
23 Councilmember Perez,
24 No, that's a fair point and I am confident we'll have that opportunity at that point, as
25 opposed to two separate points. I don't know that two different bites of the apple, for
26 lack of a better term, is necessarily in the public interest, and that was the spirit of the
27 enterprise here. Wayne, when did you sign up to testify?

28
29 Wayne Goldstein,
30 I signed up a little bit before 5:00 yesterday.

31
32 Councilmember Perez,
33 Okay, so those 11th hour signer-uppers got in still -- okay, just wanted to make sure.

34
35 Council President Leventhal,
36 Mr. Denis.

37
38 Councilmember Denis,
39 Thank you Mr. President. I want to thank Mr. Perez for sponsoring this Zoning Text
40 Amendment with me and I thank all the witnesses, I appreciate the County Executive's
41 support and the Planning Board vote. I understand that the vote at the Planning Board
42 was 5-nothing, is that correct? It was unanimous at the Planning Board. I brought a map
43 just to help illustrate to the Council and others exactly what we're talking about. This is
44 Lot 31. This is Lot 31A. This is Capital Crescent Trail, Bethesda Avenue, Woodmont

35

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1 Avenue. The Zoning Text Amendment is needed to make the development of Lot 31 in
2 Downtown Bethesda feasible. The Bethesda Central Business District sector plan calls
3 for the development of Lot 31 as housing atop a new underground county parking
4 garage. Under the development proposals selected by the County Executive, the
5 development will also include the smaller Lot 31A just do the east, I have an aerial shot
6 as well of the area and again you can see Lot 31, Lot 31A, Woodmont Avenue. The
7 problem is that Lot 31 and Lot 31A are zoned differently. In addition Lot 31A is located
8 in the Bethesda Central Business District while Lot 31, just across the street, is not. So,
9 despite the adjacency of the lots, the differences in locations and zoning would require
10 the developer to file two separate zoning applications with different rules and
11 procedures. This Zoning Text Amendment does not grant anything to the developer, nor
12 does it indicate approval of the development plan. I would like to repeat that again. This
13 Zoning Text Amendment does not grant anything to the developer nor does it indicate
14 approval of the development plan. What it does is to allow for this project to be
15 considered under a single zoning application on a single schedule. This will allow for a
16 single unified development plan, subdivision plan, and site plan. A unified plan will allow
17 for the density to be located closer towards Wisconsin Avenue and away from the
18 neighboring single family neighborhood. A unified plan will also facilitate safety
19 improvements to the intersection of Woodmont Avenue and Bethesda Avenues. So, that
20 was that's the Zoning Text Amendment.

21
22 Council President Leventhal,
23 Ms. Floreen.

24
25 Councilmember Floreen,
26 Thank you. My question is really for staff. Is it correct that this is changing the rules of
27 the TSR zone?

28
29 Ralph Wilson,
30 No, not for the TSR. The text amendment as introduced does not in any way effect the
31 TSR zone. The Planning Board did recommend an expansion of the Zoning Text
32 Amendment to include the same process for, for the TSR zone but that is not part of a
33 text amendment as it was introduced.

34
35 Councilmember Floreen,
36 The process, the idea here is to combine the process for related properties as I
37 understand it but the concern has been raised that this changes the properties that
38 would be considered for inclusion in the TSR zone as I heard the testimony, that, and
39 it's a little hard to tell from the way this is drafted but, the Planning Board report
40 indicates that right now the TSR zone can be applied in an area adjacent to CBD or
41 within 1,500 feet of the metro. And that's the rule today?

42
43 Ralph Wilson,
44 Right.



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1
2 Councilmember Floreen,
3 So there is no change.
4
5 Ralph Wilson,
6 No change with that, in that respect.
7
8 Councilmember Floreen,
9 Okay. So...
10
11 Ralph Wilson,
12 But I think the committee will...
13
14 Councilmember Floreen,
15 You read it differently Mr. Humphrey?
16
17 Ralph Wilson,
18 Yeah, the committee will probably address that though since the Planning Board did
19 recommend the TSR be given the same treatment as the TSM zone.
20
21 Councilmember Floreen,
22 You mean, that's what the Planning Board recommended?
23
24 Ralph Wilson,
25 Yeah, and we will have maps for the work session showing all of the properties that are
26 affected under both of those scenarios.
27
28 Councilmember Floreen,
29 Well, if that's the case is there a notice issue?
30
31 Ralph Wilson,
32 I think, now we did a generally amend provision in the ad to participate any changes to
33 the Transit Station Zone as a general matter. I will look closer at that for the work
34 session, but I think that would be covered.
35
36 Councilmember Floreen,
37 Okay, well let's, I haven't read what the Planning Board has said, but if they're
38 suggesting substantive changes that's certainly something we want to get information
39 out about.
40
41 Ralph Wilson,
42 Okay, of course the work session is on Thursday, so we'll...
43
44 Councilmember Floreen,

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1 That's short turn around, yeah, well we'll take it up then.

2
3 Jim Humphrey,
4 Councilmember, The Federation's concern, and I'd like to actually revise what I said
5 orally and revert your attention to the testimony as it's written. The change by inserting
6 the word "or" allows TSR zoning to be used anywhere in a CBD. Not restricted by a
7 1,500-foot distance. Which is currently allowed, okay it says anywhere within a CBD,
8 comma, or within 1,500-feet of a metro transit station, now that also allows the use not
9 currently allowed. Because, right now they have to be in areas adjacent to a CBD. This
10 would allow properties anywhere within 1,500 feet of any metro station, even those
11 without CBD's, to apply for TSR zoning. So, that use of the word "or" there, if you
12 remove that then you're consistent with we believe the Council's intent for TSR.

13
14 Ralph Wilson,
15 Yeah, Jim, I think you're correct. That was, I think, an unintended consequence of the
16 drafting of the text amendment. I don't think there was any effort on the part of the
17 sponsors to affect the TSR's.

18
19 Councilmember Floreen,
20 Okay, we've highlighted this ...

21
22 Jim Humphrey,
23 We have taken about a week at the Federation Planning and Land Use Committee
24 trying to figure this out. I talked to John Carter last Thursday. He assured me ZTA as far
25 as he knew hadn't, had no impact on TSR zone. The Council Staff report for the packet
26 today, makes no mention of the TSR zone, but we're very concerned about a rather
27 significant change to the TSR zone, and a number of areas in the county [inaudible].

28
29 Councilmember Floreen,
30 Okay then we will take it up then, thanks. That's very helpful thanks Jim.

31
32 Council President Leventhal,
33 Okay. Are there actually additional questions for Mr. Russ or Mr. Rother?

34
35 Councilmember Floreen,
36 No, Not anymore.

37
38 Council President Leventhal,
39 Apparently not, that concludes this matter, thank you very much. We're now on agenda
40 item 11. This is a public hearing on bill 43-05, weapons, restrictions, deer management
41 which would modify the circumstances under which a person may discharge a gun in
42 and outside the urban area, modify the circumstances under which a person may
43 discharge a bow, repeal language authorizing a person to carry or discharge a firearm
44 under certain circumstances involving predatory animals, make technical clarifying and

38

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1 stylistic changes to the law governing the discharge of a weapon, and generally
2 amendment the law governing weapons restrictions. The Public Safety Committee is
3 tentatively scheduled to take this up on March 20th at 9:30 a.m. Anyone that wants to
4 submit additional information for the Council to consider should do so by the close of
5 business February 20th. Before beginning your presentation please state your name
6 and your name clearly for the record. We have Jeremy Criss, Jim Clifford, Rob Gibbs,
7 Knowles Little, Peter Marino. Mr. Criss, go ahead and press the button, introduce
8 yourself, and proceed.
9

10 Jeremy Criss,

11 Good morning. I'm Jeremy Criss, I work in the Department of Economic Development.
12 I'm the Agricultural Services Manager, and I'm speaking on behalf of the County
13 Executive Douglas Duncan. Thank you for the opportunity to comment on the legislation
14 which would establish greater flexibility for the management of white tail deer in the
15 county. The County Executive supports the intent of the legislation before you and
16 believes it will help to reduce the population of the deer. The Executive believes this bill
17 will need to be amended as recommended by the County Attorney's office. The copy of
18 the County Attorney's recommendations was provided to Council staff and should be
19 used as part of the Public Safety worksession. The items contained in the legislation
20 represent some of the initiatives identified during the deer management workshop that
21 was sponsored by Councilmember Knapp and the County Executive, for the purpose of
22 farmers and hunters suggesting ways to improve deer management. As you are aware
23 the current overpopulation of deer in the county is causing substantial economic harm to
24 the county's farmers. According to a 2004 land owners' survey, deer have destroyed the
25 forest habitat in the county, and account for over 1 million in crop losses to county
26 farmers. The County Executive is committed to agriculture and the business of farming
27 in Montgomery County, and this legislation will help our farmers. This bill will also help
28 to simplify the set back requirements for the use of weapons in the county, and it will
29 also help landowners with more than 50 acres in the urban area to better manage deer.
30 The Executive Staff looks forward to working with you, in committee, as this legislation
31 is fine tuned so it can provide additional tools and mechanisms to the agricultural
32 community. As a resource I have attached to my testimony a breakdown of the
33 properties that are 50 acres or greater in the urban area and also a map that tries to
34 illustrate where those properties are located. Thank you.
35

36 Council President Leventhal,
37 Thank you, Mr. Clifford.
38

39 Jim Clifford,

40 Good afternoon thank you Mr. President and members of Council. I'm a farmer, part-
41 time farmer in Poolesville, and a member of the Montgomery County Agricultural
42 Advisory Committee. My wife is not big on hunting so please don't tell her I was here
43 today. We want to thank you for this...
44



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Unidentified Speaker,
She'll find out.

Jim Clifford,

We appreciate this opportunity to present our views regarding proposed changes for the County's as weapon law. The Agricultural Advisory Committee would like to thank Councilman Mike Knapp for introducing the bill and for the way it proposes several ways to improve management of deer in the county. The growing population of white tail deer representing a major factor for agricultural profitability and viability as the deer destroy farmer's crops and other property. We're encouraged by the measures that our county and state elected officials have taken in the last year to help address the needs of farmers in the area of deer management. It's our hope that over time Montgomery County will achieve a more balanced population of deer as we continue to implement specific changes to county and state regulations that govern the discharge of weapons. The Agricultural Advisory Committee is interested in participating in the upcoming work session to review the proposed changes in the county weapons law, as amendments to the bill are contemplated. The AAC is not clear as to why portions of sections 57-14 relating to predatory animals have been recommended to be deleted from the law, and we will request an opportunity to be heard on that as we discuss this further. Thank you again, for hearing our concerns and addressing our needs of agriculture. Thank you.

Council President Leventhal,
Thank you Mr. Clifford, Mr. Gibbs.

Rob Gibbs,

Yes, thank you for the opportunity. My name is Rob Gibbs. I'm Chairman of the Montgomery County Deer Management Work group. It was the work of the Deer Management Work group and others that recommended we do support these changes. I wanted to just briefly run through them some of our thought processes. One change is to allow landowners within the urban zone with 50 acres or more contiguous property to use firearms without getting an annual exemption from the Chief of Police, as is required now. We believe that 50 acres is adequate in order to apply the same safety zone rules that would be outside of the urban zone. Another change is to allow the use of firearms on M-NCPPC properties within the urban zone as part of commission sanctioned deer management program without the annual exemption from Chief of Police. Most of our properties are well in excess of 50 acres so the same reasoning applies, and in addition, we have now 10 years of experience implementing what is has become a nationally recognized deer management program with a stellar safety record. Another change is a change to distance requirements for the use of firearms outside of the urban zone and for bow and arrow anywhere in the county. The current county regulations restrict the discharge of firearm within 100 yards of a road as it does for bow and arrow, and for firearms within 200 yards of a building. We feel these restrictions are overly restrictive and in addition they're not well known to the public or the county police leading to confusion and we don't think they're really being enforced. State regulations,

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1 on the other hand, are well known to all of the law enforcement agents and to the
2 hunting public, and have proven safe over many millions of hours of public hunting. We
3 also support the additional language changes to better clarify some of the ambiguities
4 and points of confusion within the current regulations, and look forward to working
5 further to make this change. Thank you.

6
7 Council President Leventhal,
8 Thank you, Mr. Gibbs. Mr. Little.

9
10 Knowles Little,

11 Yes, for the record my name is Knowles Little. I live at 9109 Scott Drive, Rockville, in
12 Phil Andrews' district. I wish to thank Councilman Knapp for introducing this bill. I lived
13 at this address adjacent to the Watts Branch Watershed since 1952, and have seen the
14 deer population grow from zero to its present unhealthy levels. I'm not now, or never
15 have been a hunter; however, I do support responsible deer hunting in the urban zone
16 as a necessary management aid. Until last fall my wife and I unhappily accepted the
17 destruction of our property by this invasive species and is just one of the inevitable
18 changes that we must accept along with higher taxation and more traffic. We have given
19 up serious gardening and something we used to enjoy. However, It is Jenny's
20 debilitating lyme Disease that has brought me here today. I will add that much more
21 than this bill is needed. The deer are an invasive species. Besides destroying suburban
22 landscape and the farmer's crops that we just heard about, they cause serious traffic
23 accidents, they bring us Lyme Disease, and environmentalist should know that
24 woodland understory is being destroyed by the deer, this adds to stream erosion. The
25 deer have reduced the variety of species of woodland flora by half and will eventually
26 eradicate the native oak trees according to the Smithsonian Research Facility in
27 Virginia. There were no deer when my family moved to Scott Drive in 1952, nor did we
28 see deer when my sons were growing up in the 70s. They did appear occasionally in
29 the 80s but now our community is overrun. They do not belong here in these numbers.
30 Jenny's debilitating Lyme Disease moved me to organize a public education meeting
31 last November. We had knowledgeable speakers from DNR, a Lyme Disease
32 prevention expert, and Peter Marino, who's going to speak next talking about bow
33 hunting. Subsequently several individuals in our neighborhood have obtained written
34 permissions for responsible bow hunting on lots. The process showed me that people
35 are overwhelmingly in favor of deer management even in this dense urban zone. We
36 have one to two acre home cites where I live. Everyone regretted the necessity for this
37 control. But 85.3% of the people I contact gave written permission for hunting on their
38 properties or adjacent properties. I urge the Council to take this baby step forward in
39 managing the deer by approving the bill. Thank you for this opportunity.

40
41 Council President Leventhal,
42 Thank you. Mr. Marino.

43
44 Peter Marino,



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1 My name is Staff Sergeant Peter Marino, Retired, United States Army, and I would like
2 to address the Council and say thank you for allowing me to testify. I'm here today on
3 the behalf of the Maryland Bow Hunting Society, I'm the Director of the Central Chapter,
4 Montgomery County Chapter Maryland Bow Hunting Society. I would like to address
5 your attention to the pretty lime green piece of paper that I brought with me. My three
6 points of discussion tonight are first the need for deer control. Obviously we have heard
7 about economical crop loss and value of property loss and the azaleas and the sweet
8 green grass that we plant every year being eaten by the deer, but also the Lyme
9 Disease. Lyme Disease is correlated with the white-footed mouse not the white tail deer
10 but, the white tailed deer are so thick in some areas of Montgomery County that they're
11 starving to death and dying. Therefore all of the predators that we do have, fox, coyote,
12 and house cats and stuff like that, are scrounging off of the carcasses of the deceased
13 deer instead of eating the white-footed mouse, which is directly correlated to Lyme
14 Disease. By reducing the numbers to a healthy herd population of white tailed deer, in
15 turn we are helping the environment out and getting rid of Lyme Disease. Next, I would
16 like to bring you up to the speed on the nature of this of the weapons law with the 100
17 yards from a road discharge of a weapon. First off Seneca Creek State Park which this
18 year opened up to bow hunting for the first time ever has posted safety zones along the
19 side of the road in the woods, only 30 yards from the road. So, whoever posted the
20 signs obviously didn't even know the law was on the books either, or else they would
21 have posted them 100 yards from the road. As I have written in my piece of paper, you
22 can also see my testimony of the dove fields at [McGee Beshers] off of River Road. This
23 is a public hunting ground here in Montgomery County; people are discharging
24 shotguns all the time. The State Police and local Police all have contradicting interests
25 when it comes to a law that's not being enforced. Therefore a lot of law enforcement
26 don't know this law exists and do not enforce it. We asked that this law be taken off the
27 books completely. Because one, the weapons discharge, to mirror the state's program
28 on, from, or across the road is adequate enough. The urban zones is also ample
29 enough opportunity enough to prevent a safe haven for areas in a deeper urban
30 environment like the cities. And last, the safety of bow hunting. As I mentioned in my
31 last paragraph we provided a safety video which I brought here today but due to the
32 time we have I don't have time to present it for you. The safety of bow hunting itself,
33 when a bow hunter is in an elevated tree stand he's taking an average shot distance of
34 20 yards. That's from that wall to the back wall in the back of the room, at that distance I
35 can tell what is around me. Children, pets, people, joggers, people mowing lawns
36 anything like that. At no time is anyone in danger when there are bow hunters in the
37 woods. There has never been a single case in Maryland where a non-hunter has been
38 injured by a bow hunter, period. With that I would like to conclude my speech, thank
39 you.

40
41 Council President Leventhal,

42 Thank you very much, we appreciate all our witnesses. Mr. Little, we wish your wife
43 well, hope that she's coping with her concern. And there are no questions. Oh, there is a
44 question. Mr. Andrews.

42

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for its form or content. Please note that errors and/or omissions may have occurred.

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1
2 Councilmember Andrews,
3 Thank you all for testifying, this is an important issue, and as was indicated it has public
4 safety, public health, and economic consequences. I would like to invite you all to
5 participate in the Public Safety worksession which would be on March 20th.

6
7 Council President Leventhal,
8 Very good. Mr. Perez.

9
10 Councilmember Perez,
11 I wanted to reiterate, Jeremy, you're well aware, but the Council has been actively
12 involved in the other State measures relating to permitting additional Sundays to allow
13 for deer hunting, and the Council has been on record strongly supporting that. And we
14 have continued to make sure that our support is heard by our colleagues in Annapolis.
15 And Mr. Knapp has been taking the lead in that, and I commend him for his efforts on
16 that. So, there is a number of interventions that we're attempting to under take
17 simultaneously to address this and I want to thank you and others for bringing this issue
18 to our attention.

19
20 Council President Leventhal,
21 Okay. Mr. Andrews.

22
23 Councilmember Andrews,
24 Thank you. I thought I should clarify since this issue wasn't raised by the folks testifying
25 today. You talked about the public health, Lyme Disease, and the economic impacts. In
26 terms of public safety I'm referring to the number of collisions that are caused, that
27 we've had between deer and vehicles, which are over 2,000 a year reported, and we
28 know many are not reported, so that's a significant problem as well.

29
30 Council President Leventhal,
31 Right, thank you all very much, appreciate your testimony. Agenda item 12 is a public
32 hearing on Bill 45-05. Motor Vehicles Parking Violations, which would modify the law
33 relating to fines imposed for parking in a fire lane or a space for individuals with
34 disabilities, and also make certain technical, clarifying, and stylistic changes to the law
35 governing parking violations and generally amend the law relating to the parking of
36 vehicles. The Transportation and Environment Committee is scheduled to take up this
37 matter on February 2nd at 2:00 p.m. Anyone who wants to submit additional information
38 for the Council to consider, should do so by the close of business Thursday, January
39 26th. We have one witness, Chief -- Division Chief Michael Love. Chief Love, please
40 state your name clearly for the record.

41
42 Michael Love,
43 For the record, I'm Division Chief Michael Love testifying on behalf of County Executive
44 Douglas Duncan. We appreciate this opportunity to express our comments and thank

43

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Councilmembers Subin and Praisner for introducing the bill. The County Executive supports any improvements to language in county law that develops or that helps discourage unlawful parking that would limit fire and rescue access to anyone who is experiencing an emergency. The Fire and Rescue Service must have a clear path to all occupancies in Montgomery County. This is established in County Code, Chapter 22, Section 22-33. The Fire and Rescue Service has identified hundreds of places throughout the county where we have specifically established official fire lanes. The problem with the current minimum and maximum fine of \$250 is that nearly everyone receiving one of those tickets appeals this case in court. In the majority of cases judges that did not agree with the fine have dismissed it with only a charge of court administrative costs. What ultimately happens is the county ends up paying out more in enforcing the tickets than the person who violated the law. When someone appeals a parking ticket to court, it automatically requires the ticket writer to attend court, which always has a cost in terms of overtime to Montgomery County Fire and Rescue Service. This cost can be as as much as \$100 per ticket writer. Bill 44-05 provides language that specifies the County Executive to establish regulations to administer the chapter. MCFRS agrees with this approach, as this may provide appropriate fines in the regulation which will allow increased flexibility in how the fines are administered. Montgomery County Fire and Rescue Service looks forward to having a cost effective means of enforcing fire lanes, and feel County Council Bill 44-05 provides appropriate improvement to existing language that allows us the means to accomplish this. Thank you.

Council President Leventhal,

Thank you, that concludes the public hearings, it has come to the Council's attention that not all civic associations were notified of the Council's public hearing tonight on the Damascus master plan in a timely manner. Therefore, the Council will in a moment, go into recess until tonight's public hearing at 7:30. This public hearing tonight will take place tonight and will continue on February 28th at 7:30 p.m. The civic associations will be notified of the continuation of the hearing, and comments on the plan may be submitted through February 28th. The Council stands in recess until 7:30 tonight. The PHED Committee will meet in 5 minutes.

Councilmember Silverman,

The PHED Committee will meet at 2:30. Thank you.